IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

TUESDAY, THE 14TH AUGUST 2007 / 23RD SRAVANA 1929

WP(C).No. 17362 of 2005(P)

PETITIONER: PLAINTIFF

MATHEW MATHEW, S/O.MATHAI MATHEW,
VALIYAMAILADIYIL, KEZHUVAMKULAM KARA,
PULIYANNOOR, PALA, KOTTAYAMA DISTRICT.

BY ADV. SRI.S.PRASANTH

RESPONDENTS: DEFENDANTS

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1. MATHAI MATHEW, VALIYAMAILADIYIL,
KEZHUVAMKULAM KARA, PULIYANNOOR,
PALA, KOTTAYAM DISTRICT.

2. BRIJITH, D/O.MATHAIA MATHEW,
VALIYAMAILADIYIL, KEZHUVAMKULAM KARA,
PULIYANNOOR, PALA, KOTTAYAM DISTRICT.

3. ANTONY, S/O.MATHAI MATHEW,
VALIYAMAILADIYIL, KEZHUVAMKULAM KARA,
PULIYANNOOR, PALA, KOTTAYAM DISTRICT.

4. JOSEPH MATHEW, VALIYAMAILADIYIL,
KEZHUVAMKULAM KARA, PULIYANNOOR, PALA,
KOTTAYAM DISTRICT.

5. JOSY MATHEW,
VALIYAMAILADIYIL,KEZHUVAMKULAM KARA,
PULIYANNOOR, PALA, KOTTAYAM DISTRICT.

BY ADV. SRI.BABY THOMAS
SRI.GOVIND K.BHARATHAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 14/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC : 17362 OF 2005

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 : TRUE COPY OF THE CONSENT DEED DT.27.05.95.

EXT.P2 : TRUE COPY OF THE PRIOR CONSENT DEED DATED 08.02.93.

EXT.P3 : TRUE COPY OF THE IA NO.834/05 IN OS NO.19/01 IN THE FILE OF PALA MUNSIFF COURT.

EXT.P4 : TRUE COPY OF THE ORDER IN IA NO.834/05 IN OS NO.19/01.

/TRUE COPY/

PA TO JUDGE.

PIUS C. KURIAKOSE, J.

W.P.(C) No. 17362 OF 2005

Dated this the 14th day of August, 2007

JUDGMENT

Ext.P2 which is the photostat copy of a compulsory registrable document was sought to be put in evidence by the plaintiff petitioner for the purpose of substantiating his claim. The claim was that on the strength of Ext.P2, the plaintiff had obtained ownership and possession of a portion of the plaint schedule property. Under Ext.P4, the learned Munsiff dismissed the petitioner's application for reception of the document in evidence, taking the view that being a compulsory registrable document, even the original of Ext.P2 could not have been marked in evidence. The learned Judge was not prepared to mark it even for proving any collateral transaction as contemplated by the proviso to Section 49 of the Registration Act.

Heard Sri.B.Prasanth, learned counsel for the petitioner. Mr.Prasanth would submit that the learned Munsiff has already permitted marking of Ext.P1 which was also a compulsory registrable document. Therefore, he was not justified in not marking Ext.P2. Counsel further submitted that even if Ext.P2 is a compulsory registrable document the same can be relied on for proving collateral transactions for the purpose of proviso to Section 49 of the Registration Act.

Mr.Prasanth submitted that Ext.P2 should have been allowed to be marked at least for the purpose of proving possession. I cannot agree. A reading of the plaint will show that the possession over the property is claimed by the virtue of the ownership apparently conveyed under Ext.P4. In other words, there is no claim for possession other than on the strength of the ownership conveyed under Ext.P2. Learned Munsiff in my opinion was correct in his view that it is not for the purpose of proving any collateral transaction that marking of Ext.P2 is sought. At any rate, the impugned order cannot be said to be vitiated to the extent of justifying interference under the supervisory jurisdiction of this Court which is to be invoked only in exceptional circumstances. Challenge against the impugned order fails. The Writ Petition is dismissed.

PIUS C. KURIAKOSE, JUDGE

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